

## REMARKS/ARGUMENTS

This response is prepared and filed in response to the most recent Patent Office Action taken in this case, which Action was dated February 17, 2005. In the Action, the Examiner rejected the single claim in this application under 35 U.S. C. § 103 (a) as being unpatentable over U.S. Patent No. 5,319,867 to Weber in view of two product publications referred to in the Examiner's Action as "Rogers".

Applicants have focused a thoughtful review of and respecting the Examiner's Action and his comments, have carefully considered the cited and applied prior art references, have reviewed the disclosure contents and of course the single claim now presented in this application, and by the present Amendment, and simply via the Remarks/Arguments section of this Amendment, point out why the Examiner's position regarding obviousness and unpatentability is wrong and ought to be withdrawn.

Fundamentally, the Examiner is apparently missing a very important point regarding the landscape and presentation of the present invention with respect to its distinguishing contribution to the field of shoe insoles. As far as applicants can tell, not until the advent of their presently presented and claimed invention was there any recognition that the conventional approach employed in the construction of shoe insoles -- an approach involving at least some appreciable element of springy resilience in a shoe insole, is fundamentally an incorrect approach for dealing with shoe insole load-cushioning behavior. Applicants have contributed to the art the important recognition that by limiting cushioning action in the realm of a shoe insole solely to action which is characterized as having a non-spring-back response, and with this action being

further characterized by the practice and implementation of acceleration-rate-sensitivity and viscoelasticity, it is possible to provide users with a significantly improved load-cushioning experience in the wearing of shoes containing such insole structure. Cooperating with this important load-cushioning realm of behavior is the employment, according to applicants' invention, of a moisture-wicking fabric overlayer which is joined to the foot-contacting (upper) surface of load-cushioning structure, with this moisture wicking fabric including elongate load-distributing fibers.

The Weber reference, combined as proposed by the Examiner with technology described in the Rogers reference material, simply will not produce the environment claimed in applicants' claim, even allowing the possibility that the Examiner's proposed combination is appropriate in the sense that the cited art provides the necessary leading to cause one of ordinary skill in the art to think about combining these reference materials in the first place. In other words, even if one allows the possibility that there might be a suggestion for combining these references, and applicants do not agree with that position, such a combination, once made, still does not lead to the realization of applicants' claimed invention.

The reason fundamentally that this is so, is that any such combination will necessarily employ materials set forth as being important in and by the Weber reference, which materials include undesirable, but ever present, qualities of resilience or springyness.

The Weber reference text is rich with references to the importance of using materials that are characterized with resiliency or springiness. Not only does the Weber specification text contain abundant reference to resiliency, it also describes a relatively large

family of “cushioning” materials each of which is known by those skilled in the art to exhibit qualities of springy resiliency.

Accordingly, no matter how one attempts to combine any of the materials described in the Rogers references with the structure proposed by Weber, one will always end up with a load-cushioning structure which is characterized with qualities of springy resiliency. That condition is simply not avoidable.

It is, of course, not permissible to perform a complete substitution of non-resilient materials for the resilient material characteristics which applicants assert are essential to the heart of the Weber disclosure environment. Making such a complete substitution, given the state of the art at the time the present invention was made, is a contribution made solely by applicants, and it is their teaching which is perhaps being borrowed by the Examiner to propose that in some fashion the Weber structure can be modified to become like applicants’ claimed structure.

Taking a very careful look at that paragraph in current claim 7 presented herein which describes the nature of applicants’ claimed cushioning layer, it is significant to note that this layer is recited as one which is fully responsible for all cushioning behavior in the insole, with this behavior being limited *solely* to a non-springback response characterized by viscoelasticity and by acceleration-rate sensitivity. This language affords no leeway for combining cushioning materials lacking these qualities, and particularly combining materials that offer an unwanted characteristic of springy resiliency.

For all of the reasons given above, applicants’ single claim to invention presented herein is believed to be clearly distinguishable over the cited and applied art, and thus to be

patentable. Accordingly, favorable reconsideration of this application, and allowance of claim 7 therein, are respectfully solicited. If the Examiner has any questions regarding the amendment or remarks, the Examiner is invited to contact Attorney-of-Record Jon M. Dickinson, Esq., at 503-504-2271.

**Request for Extension of time in Which to Respond**

Applicants hereby request an extension of time under 37 C.F.R. § 1.136. A PTOForm 2038 Credit Card authorization in the amount OF \$225.00 is enclosed to pay the requisite extension fee. The Commissioner is hereby authorized to charge any additional fees which may be required, or credit any over-payment to Account No. 22-0258.

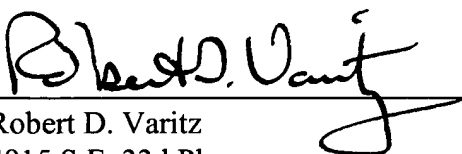
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Respectfully Submitted,

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